

## **Fair Housing Act: Protections for Disabled Residents and Prospective Residents Frequently Asked Questions**

The federal Fair Housing Act prohibits housing providers from discriminating against people because of their disability or the disability of anyone associated with them, and from treating people less favorably than others because of their disabilities.

These laws also require housing providers "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person(s) equal opportunity to use and enjoy a dwelling."

In addition, these laws require that housing providers allow residents to make reasonable modifications to units and common spaces in a dwelling. Finally, these laws include accessibility design and construction requirements for covered multifamily housing.

Persons with a disability are defined as individuals with physical or mental impairments that substantially limit one or more major life activities. Major life activities may include but are not limited to, seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking or working. Covered mental and physical impairments may include, but are not limited to, blindness, hearing impairment, mobility impairment, HIV infection, asthma, mental retardation, a history of alcoholism or drug addiction, chronic fatigue, learning disability, head injury and mental illness.

The Fair Housing Act also protects persons who have a record of such impairment or are regarded as having such an impairment. Current users of controlled substances, persons convicted of the illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act because of that status.

This document answers some of the most frequently asked questions about federal fair housing protections for disabled persons.

### **Question 1. What questions can I ask prospective residents about disabilities?**

Generally, housing providers should only ask a person with a disability questions that are asked of all applicants or residents. It's okay to ask questions such as:

- Can you pay the rent?
- Do you have references regarding your resident history?
- Will you comply with the rules?
- Do you have a criminal history?
- Are you currently using illegal drugs?
- Have you been convicted of the illegal manufacture or distribution of a controlled substance?

If your housing is designed or designated for people with disabilities, you can ask every applicant if he or she qualifies for the housing.

Also, if a potential resident is requesting a reasonable accommodation, a property owner can request verification of the person's need for the requested accommodation.

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### **Question 2. What questions should I avoid?**

You should not ask the following questions:

- Do you have a disability?
  - Do you take medication?
  - How severe is your disability?
  - Why are you getting SSI?
  - Can I see your medical records?
  - Have you ever been hospitalized for mental illness?
  - Have you ever been in drug or alcohol rehab?
  - Are you capable of living independently?
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### **Question 3. What other ways can I welcome people with disabilities?**

Some disabilities are obvious and some are not, so let all applicants and residents know that you will provide reasonable accommodations upon request. You may want to include a notice in your pre-printed application materials and in your resident rules that states your willingness to provide reasonable accommodations.

Develop a reasonable accommodations/modifications policy to distribute to your residents. Train your staff on how to respond to reasonable accommodation requests in a timely and professional manner.

Finally, make sure that your property meets the accessibility standards under the state and federal fair housing laws. For older buildings, make sure that your property has an accessible leasing office and an accessible route from public transportation to your leasing office.

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## **Section II: Reasonable Accommodations**

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### **Question 4. What is a reasonable accommodation?**

People with disabilities may have special needs due to their disabilities, so in some cases, simply treating them the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, adaptation or modification to a policy, program or service, which will allow a person with a disability to use and enjoy a dwelling, including public and common use spaces. Examples of reasonable accommodations include providing rental materials in alternate formats such as large print, providing a reserved accessible parking space near a resident's apartment, or allowing a resident to have a service animal in a "no pets" building. See [Appendix A](#) for a list of common accommodations.

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### **Question 5. How do I know if someone needs an accommodation?**

The duty to accommodate arises when the housing provider has knowledge that a disability exists and that an accommodation may be required for the disabled person to use and enjoy the housing. Generally, the applicant or resident must make a request for an accommodation.

Fair housing disability laws do not prescribe a uniform procedure for requesting a reasonable accommodation or modification. To make a request, an individual does not need to mention fair housing disability laws or use the phrase "reasonable accommodation." In general, a resident or applicant should make clear to the housing provider that he or she is requesting that an exception, change or adjustment be made to a rule, policy or practice because he or she has a disability. The resident should describe what type of accommodation is needed and explain the relationship between the requested accommodation and the disability. Although not required by fair housing disability laws, it is helpful if these requests are made in writing, so there will be documentation of the request.

It is advisable for a housing provider to establish a process for responding to requests for accommodations and/or modifications. Keep in mind that a resident cannot be required to use a specific form for such requests, and a housing provider cannot refuse to provide an accommodation or modification just because the resident has not used the provider's form.

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### **Question 6. If a resident requests an accommodation, can I require documentation that the resident really needs the accommodation?**

You may request the resident to provide written verification from the resident's health care or mental health provider that the resident has a disability and needs the accommodation requested (the provider need not be an MD). You can require proof that the resident is disabled, but cannot require the resident to provide specific information about the disability.

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### **Question 7. How do you tell if a request is "reasonable" or not?**

An accommodation is reasonable if it is related to the resident's disability needs, is not an undue administrative or financial burden for the housing provider, and does not fundamentally alter the housing and services the housing provider offers. All requests for accommodation must be considered and should be analyzed on a case-by-case basis. This should be an interactive process between the housing provider and the resident. If the resident's proposal is not feasible or is an undue burden, the housing provider can suggest alternative accommodations that meet the resident's needs; however, the resident is usually in the best position to know what accommodation will meet his or her needs.

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**Question 8. A resident who recently began using a walker to get around has requested a move to a ground floor apartment. Must I allow her to move?**

If a ground floor unit is available, you should provide it to the resident as a reasonable accommodation. If no unit is available, some other options could include giving the resident first choice of moving into the next available ground floor unit or allowing her to break her lease to move to another property that meets her needs.

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**Question 9. We have a "no pets" rule and a resident with a disability has asked to keep a "service animal." What do I need to know about these animals?**

It is a reasonable accommodation for housing providers to allow residents with disabilities to live with service animals in order to meet their disability-related needs. A service animal (also referred to as an assistance animal) usually is defined as "any animal that is individually trained to do work or perform tasks for the benefit of a person with a disability." Fair housing laws also consider "emotional support" or "companion" animals to be a type of service or assistance animal.

- Service animals are **not** considered to be pets. A person with a disability uses a service animal as an auxiliary aid—similar to the use of a cane, crutches or wheelchair. For this reason, fair housing laws require that housing providers permit the use of a service animal by an individual with a disability despite "no pet" rules.
  - Dogs are the most common service animals, but other species are used (for example, cats or birds). Service animals may be any breed, size or weight. In rare cases, an individual with a disability may require more than one service animal.
  - Pet deposits or fees **cannot** be charged for service animals. A resident can be charged for damages caused by the animal. All residents can be charged a security deposit.
  - A resident with a service animal is responsible for the animal's care. The animal's owner should observe leash laws, properly dispose of animal waste, and ensure the animal behaves around other residents and does not break tenancy rules (such as noise rules).
  - There is no legal requirement for service animals to be visibly identified (no special collar or harness are needed) or to have documentation (no license, training certification or identification papers are needed). A housing provider can require that the animal meet state or local health and licensing requirements.
  - If other residents ask why a resident has an animal in a "no pet" property, a helpful response is to let them know you are complying with the fair housing laws. Stop there—don't mention disability. Ideally, all of your residents should be aware of your reasonable accommodations policies and your service animal policies, so service animals should not be a new concept for them.
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**Question 10. An otherwise qualified applicant asked to have a Rottweiler as a service animal, but our insurance company will not insure certain breeds, including Rottweilers. What should we do?**

You should ask your insurance provider to make a reasonable accommodation in their

policy under the fair housing laws. Request the insurance company to waive their blanket prohibition of a certain breed and instead to make an individual assessment of this service animal's behavior. If there is no evidence that an individual service animal is dangerous, the insurance company may have a hard time defending a denial of a reasonable accommodation request. Both you and the applicant could file fair housing complaints against the insurance company. If found in violation of the fair housing laws, the insurance company could be responsible for any damages that you and the applicant incur waiting for them to respond to the request.

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**Question 11. A resident with a disability has requested a reserved accessible parking space in our property that has no assigned parking. Must we provide this?**

If you provide parking for residents, it is a reasonable accommodation to provide a reserved accessible parking space when a resident with a disability requests it. Here are basic guidelines:

- Many residents who need an accessible parking space don't need an extra-wide space with an access aisle. They may only need a regular-size parking space nearest to their front door (or on the most accessible route to the front door). Discuss with the resident his or her needs for parking.
- Even if you usually do not assign parking spaces to specific residents or units, provide a reserved parking space to a resident with a disability. Be sure to post a sign at the head of the parking space saying the spot is **reserved and enforced**. It should be marked as reserved so that other people with disabilities don't park there.
- Guest parking is likely subject to ADA Title III rules, which require that at least 2% of all guest spaces in any lot meet access requirements and be designated with appropriate signage. These spaces must be at least 96" wide and must have an adjacent access aisle at least 60" wide, which allows room for a wheelchair, electric scooter or other mobility device. An access aisle can be shared between two accessible parking spaces. At least one of these spaces must be van accessible with a 96" access aisle.
- If the rental office is on-site, be sure to locate at least one accessible guest parking space next to the office.
- You must enforce a resident's reserved accessible parking space and general accessible guest parking spaces. Remember that the parking spot you provide to a resident in response to an accommodation request is separate from and in addition to any general accessible spots provided for the public or residents and their guests.
- Your standard accommodations policy can be used for accessible parking requests. If a resident has a state disabled parking permit, this is generally sufficient proof of the need for a reserved accessible parking space.

Cooperative housing and condominiums where a board or group has only limited control over parking spaces presents a more complicated situation. Boards should provide assistance within their means to the person seeking the parking accommodation. If the space desired is under the control of the owner of another unit, the two owners must be allowed to negotiate a swap or some other means for the person with the disability to have an accessible space closest to his or her unit. Careful analysis will ensure that the

law is applied properly. Boards of cooperative housing have a responsibility to accommodate a reasonable request.

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**Question 12. I've received noise complaints about a child with a developmental disability. What steps can I take to resolve this issue?**

Housing providers have a right to establish reasonable noise regulations for the comfort and peaceful enjoyment of all residents. If the noise occurs during the day and is no louder than that made by other residents (or the typical child), it would be discriminatory to treat this child differently than others. However, if the noise is excessive or occurs after hours, you can advise the family that they must obey the noise policy. If they request some time to pursue an intervention to assist them with keeping the noise down during quiet hours, you should allow that as a reasonable accommodation.

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**Question 13. Residents are complaining about the odd and threatening behavior of another resident. To keep them happy, we issued him a violation notice. His sister then notified us that he has a psychiatric disability. What should we do?**

You should determine whether the resident's behavior is only odd or whether it actually violates a tenancy rule. If the resident is merely eccentric, he has broken no rules. You should issue a violation notice only when a rule has actually been violated.

If the resident's behavior is not only odd, but violates some rule (for example, he disturbs other residents by knocking on their doors in the middle of the night), then you may need to consider the effect, if any, of the resident's disability on his behavior. If his disability is the cause of his behavior, it may be appropriate for you to inquire whether he or his sister have taken steps to minimize or eliminate the odd behaviors that result in rule violations.

However, residents also complained of "threatening" behavior. Fair housing laws do not require that a dwelling be made available to an individual whose tenancy would constitute a "direct threat" to the health or safety of other individuals. You can consider safety factors in deciding what to do and should determine whether the resident's behavior is a direct threat.

Please note that a direct threat is a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced to an acceptable level through interventions allowed by a reasonable accommodation. This threat must be real and may not be based on generalizations or stereotypes about the effects of a particular disability. If the threat cannot be minimized or eliminated, you have a right to ask the resident to leave. However, if the resident's family is pursuing treatment and/or other support interventions, you should allow them time to put those plans into place as an accommodation before asking him to leave. If the resident's behavior poses an imminent direct threat to others while the plan is being put into place, appropriate authorities can be called to remove him.

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**Question 14. Even though we've accommodated him several times, a resident with a disability keeps making accommodation requests. How many accommodations do we have to provide?**

An individual with a disability can request reasonable accommodations or modifications whenever they are needed. For example, requests may be made when an individual is applying for housing, when entering into a rental agreement, while occupying housing, and even during an eviction process. Individuals who become disabled during their tenancy may request accommodations, even if they were not disabled when they moved in. Evaluate each request in a timely and professional manner, and document your interactions with the resident.

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**Question 15. After we served a resident with a summons for an unlawful detainer action, he asked for a reasonable accommodation and expects us to work with him to help him remain a resident. Do we have to do this at such a late stage?**

Housing providers are required to provide reasonable accommodations at all points in the housing process—even at the eve of a termination of tenancy. Keep in mind that people with disabilities are not obligated to reveal their conditions and they might not do so unless they need an accommodation. It may be that a resident realizes that a reasonable accommodation is necessary only after he or she receives an eviction notice.

It's a good idea to let applicants and residents know that you will provide reasonable accommodations upon request. You can include a notice on your application form, in resident rules and even with your notices to comply or vacate that states your willingness to discuss accommodations that might address the rule violations that led to the eviction notice.

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**Question 16. Are there any circumstances when I don't have to provide an accommodation or modification?**

The request must not impose an undue financial and administrative burden on the housing provider. Note that "undue burden" usually takes into consideration the housing provider's entire resources. For example, if an applicant who uses a walker prefers a third-story apartment to a ground floor unit in a 1926 walk-up building, the housing provider does not have to install an elevator if such a modification is cost prohibitive.

The requested accommodation or modification must not require the housing provider to make a fundamental alteration in the nature of the provider's operations. For example, if a resident with a disability cannot do his own housekeeping and the housing provider does not supply housekeeping for residents, a request for such services would not be reasonable.

Note that where a particular requested accommodation or modification is not reasonable, the housing provider is still obligated to provide **other** requested accommodations or modifications that do qualify as reasonable.

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## Section III: Reasonable Modifications

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### **Question 17. What is a reasonable modification?**

A "reasonable modification" is a physical change made to a resident's living space or to the common areas of a property which is necessary to afford a resident with a disability full enjoyment of the housing.

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### **Question 18. Who pays for disability accommodations and modifications?**

The housing provider is responsible for ensuring general access to the facility and meeting minimum accessibility standards. Moreover, fair housing disability laws require that in making an accommodation, a housing provider is required to bear costs that do not amount to an undue financial and administrative burden. This means that a housing provider may be required to spend money to provide legally required reasonable accommodations to rules, policies or practices, most of which are no or low cost.

Generally, the resident is expected to cover the expenses of making reasonable physical modifications to a property. However, if the property receives federal funds under Section 504, the housing provider usually pays, unless they can prove financial or administrative hardship. The hardship is determined by looking at the cost of the modification in light of the total budget of the property.

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### **Question 19. If a resident makes a modification, how can I be sure it's done in a professional manner, with proper building permits?**

A housing provider may condition permission for a modification on the renter's providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a professional manner and that the renter will obtain any required building permits.

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### **Question 20. Can I require that the modifications be removed when a resident with a disability moves out?**

Where it is reasonable to do so, a rental housing provider may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. However, the resident need not restore the interior to its previous condition when the modifications that were made would not interfere with the next resident's use and enjoyment of the premises.

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### **Question 21. Can I charge a resident with a disability an increased security deposit to cover the costs of restoring a unit?**



The housing provider may not require an increased security deposit for residents who wish to make modifications, but the provider may negotiate an agreement that the resident pay into an interest-bearing escrow account, over a reasonable period, an amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the resident.

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**Question 22. Our building was built in the 1950s. Do I have to let a resident who uses a wheelchair modify his unit?**

Yes, this resident may need the kitchen counter tops lowered, the interior doorways widened and bathroom walls reinforced to install grab bars. You may ask for a description of the proposed modifications as well as reasonable assurances that the work will be done in a professional manner and that any required building permits will be obtained. To ensure restoration, you may also have the resident pay into an interest-bearing escrow account, over a reasonable period, an amount of money not to exceed restoration costs.

At move out you may require the resident to raise the kitchen counter tops and remove the bathroom grab bars; however, you should not require the resident to make the doorways narrow again or to remove the wall reinforcement.

## COMMON HOUSING ACCOMMODATIONS & MODIFICATIONS

Under the federal Fair Housing Act and local fair housing laws, housing providers must accommodate the needs of disabled applicants and residents. A property owner or manager must reasonably adjust rules, procedures or services in order to give disabled residents an equal opportunity to use and enjoy a dwelling unit or a common space. Housing providers must also allow disabled residents to make reasonable modifications to their living unit or common areas (in most cases, at the resident's expense), if needed for them to live comfortably and safely in their units. Housing providers cannot ask applicants or residents whether they have a disability, ask for details about the condition, or ask to see medical records. If a person requests a reasonable accommodation/modification, a housing provider may ask for proof that the request will address the resident's disability needs. Upon request, the resident should provide a letter from a health care practitioner verifying the person has a disability and requires the accommodation/modification.

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### VISION DISABILITIES

- Allow a service animal.
  - Read notices aloud to the resident or put notices in large print, audio tape or Braille.
  - Provide ample inside and outside lighting.
  - Provide large print or Brailled numbers on the front door or common use areas.
  - Remove protruding objects from hallways and outside pathways.
  - Provide a non-slip, color-contrast strip on stairs.
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### HEARING DISABILITIES

- Provide a doorbell flasher.
  - Provide a visual alarm system on smoke detectors throughout the property.
  - Provide a sign language interpreter for resident meetings.
  - If phones are provided, using a visual flasher attachment.
  - Allow a service animal.
  - Install a TTY in the rental office.
  - Amplify a communications system.
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### COGNITIVE DISABILITIES

- Write application, rental agreement and notices in clear and simple terms.
  - Explain rental agreement and tenancy rules.
  - Show where the water shutoff valve is and when to use it.
  - Show how to use appliances and common use areas.
  - Make outside door locks or security locks simpler.
  - Provide a reminder at the beginning of the month that the rent is due.
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### PSYCHIATRIC DISABILITIES

- Allow a service or companion animal.
- Move a resident to quieter unit, if requested.

- Place an application back on the waiting list (if applicant missed intake interview or got paperwork in late due to the disability).
  - Upon request, provide intervention if the resident is being harassed.
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### **PHYSICAL DISABILITIES**

- Allow mail-in applications.
  - Meet at an accessible location
  - Allow widening of doorways
  - Allow installation of bathroom grab bars.
  - Allow a personal care attendant to live with the resident.
  - Wrap kitchen and bathroom pipes with insulation.
  - Install anti-skid tape on floors, stairs
  - Allow lowering of environmental controls.
  - Allow lowering of closet rods.
  - Provide lever door handles and automatic door closers.
  - Move a resident to another floor or to the ground floor for easier mobility, if requested.
  - Clear shrubs away from pathways and trim to eye level.
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### **HIV & AIDS**

- Move a resident to another floor or to the ground floor for easier mobility, if requested.
  - Allow a personal care attendant to live with the resident in a two bedroom apartment.
  - If requested, provide intervention if the resident is being harassed.
  - Provide or allow a person from the community to educate other residents about the condition.
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### **ENVIRONMENTAL DISABILITIES**

- Use non-toxic fertilizers for landscape areas and non-toxic cleaning products for common areas.
  - Allow removal of carpet from the apartment.
  - Remove the ballast or fluorescent lights from the kitchen and bathroom.
  - Post "No Smoking" signs in common use areas such as the office, hallways, lobby and laundry room.
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